

YOUR RIGHTS AS A FEDERAL EMPLOYEE

ENFORCED BY
THE U.S. OFFICE OF SPECIAL COUNSEL

I. THE U.S. OFFICE OF SPECIAL COUNSEL (OSC) is an independent agency that investigates and prosecutes allegations of prohibited personnel practices (PPP).

WHAT IS A PROHIBITED PERSONNEL PRACTICE (PPP)?:

Under 5 U.S.C. §2302(b)(1)-(b)(13) a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

- **Discriminate (including discrimination based on marital status and political affiliation).** *EXAMPLE: Supervisor Joe refuses to promote Employee Jane because Jane is a registered Republican; or his refusal is because she is a single mother. (OSC will generally defer Title VII discrimination allegations to the EEO process, rather than duplicating already existing procedures.)*
- **Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.** *EXAMPLE: Selecting Official Joe hires Applicant Jack based on Senator Smith's recommendation that Jack be hired because Jack is a constituent; or fails to hire Applicant Jane because of Congressman Smith's recommendation based on the Congressman's friendship with Jane's parents.*
- **Coerce the political activity of any person, or take action against any employee as reprisal for refusing to engage in political activity.** *EXAMPLE: Supervisor Jane takes away significant job duties of Employee Jack because Jack will not make a contribution to Jane's favorite candidate.*
- **Deceive or willfully obstruct any person from competing for employment.** *EXAMPLE: Supervisor Joe, located in Headquarters, orders that no vacancy announcements be posted in the field office where Employee Jack works because he does not want Jack to get a new job; or falsely states that there will be extensive travel in the position when he knows that there is no travel.*
- **Engage in nepotism.** *EXAMPLE: Second-level Supervisor Jane asks First-level Supervisor Joe to hire her son; or to promote her daughter.*
- **Take a personnel action against an employee because of whistleblowing.** *EXAMPLE: Supervisor Joe directs the geographic reassignment of Employee Jack because Jack reported safety violations to the agency's Inspector General; or because employee Jill reported a gross waste of funds to the Office of Internal Affairs.*
- **Take a personnel action against any employee because of the exercise of an appeal, complaint, or grievance right.** *EXAMPLE: Supervisor Jane places Employee Jack on an undesirable detail because Employee Jack filed an administrative grievance about his performance rating.*
- **Discriminate against an employee on the basis of conduct, which does not adversely affect the performance of the employee, including discrimination based on sexual orientation.** *EXAMPLE: Jack's employment is terminated because he attended a "Gay Pride" march; or he attended a "Pro-Life" event; or he attended an animal rights rally; or he attended a gun-owners' rights meeting.*
- **Take or fail to take a personnel action, if such action would violate a veterans' preference requirement.** *Example: Supervisor Jane hired Employee Jack, without considering Veteran Jennifer, who was included on the list of eligible employees. (OSC's jurisdiction is for disciplinary actions only; the Dept. of Labor has jurisdiction to investigate for corrective actions.).*

- **Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.**
EXAMPLE: Supervisor Jane, in an effort to hire Employee Joe, tells Employee Jack that he should not apply for a position because he is not qualified and will never be selected. Employee Jack is qualified.
- **Give an unauthorized preference to a person to improve or injure the employment prospects of any particular employee or applicant.**
EXAMPLE: Supervisor Jane specifies that Spanish-speaking skills are necessary for a vacant position, for the purpose of selecting Employee Jack, who speaks fluent Spanish. The position, however, does not require Spanish-speaking skills.
- **Take a personnel action against an employee which violates a law, rule, or regulation which implements a merit systems principle.**
EXAMPLE: Supervisor Joe terminates the probationary appointment of Employee Jack because of Jack's letter to the editor criticizing affirmative action - a valid exercise of First amendment rights, a law implementing a merit system principle.
- **Implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights.**
EXAMPLE: A manager requires all employees in his program to sign a non-disclosure agreement that prohibits the employees from discussing the program in any way and fails to notify employees of protected channels for making disclosures.

What can you do if you believe a PPP has been committed?

An employee who believes a PPP has been committed can file a written complaint with the U.S. Office of Special Counsel. Complaint forms are available on the Web at www.osc.gov. Employees do not need attorneys to file a complaint. OSC is an independent and prosecutorial agency. It will investigate allegations of prohibited personnel practices, and seek any corrective and disciplinary action.

II. The U.S. Office of Special Counsel also receives confidential disclosures and enforces the Hatch Act

RECEIVING CONFIDENTIAL DISCLOSURES (5 U.S.C. §1213):

Current and former federal employees and applicants can confidentially report information evidencing a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. The OSC has the authority to require the head of the agency concerned to investigate the matter if OSC determines that a disclosure has been made.

ENFORCING THE HATCH ACT (5 U.S.C. §7321-26):

The Office of Special Counsel is authorized to issue advisory opinions that respond to federal employee questions about whether or not they may engage in specific political activities under the Act. The OSC also prosecutes violations of the Hatch Act before the Merit Systems Protection Board. These violations include: using official authority to interfere with an election result; soliciting, accepting or receiving political contributions; soliciting or discouraging political activity of persons before the employing agency; and running for public office in a partisan political election.

Need additional information?

- Information on filing a complaint: 202-254-3600 or 800-872-9855.
- Information on making a disclosure: 202-254-3640 or 800-572-2249.
- Updated and detailed information on OSC and its procedures- visit our web page: www.osc.gov.



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**THE ROLE OF THE
U.S. OFFICE
OF
SPECIAL COUNSEL**

PROTECTING FEDERAL WHISTLEBLOWERS

RECEIVING WHISTLEBLOWER DISCLOSURES

**INVESTIGATING AND PROSECUTING
PROHIBITED PERSONNEL PRACTICES**

ENFORCING THE HATCH ACT

PROTECTING SERVICE MEMBERS UNDER U.S.E.R.R.A.

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THE ROLE OF THE U.S. OFFICE OF SPECIAL COUNSEL

- **Protecting Federal Whistleblowers**
 - **Investigating and Prosecuting Prohibited Personnel Practices**
 - **Receiving Whistleblower Disclosures**
 - **Enforcing the Hatch Act**
 - **Protecting Service Members' Reemployment Rights**
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What is the Office of Special Counsel?

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Under the Civil Service Reform Act and the Whistleblower Protection Act, the OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.

The OSC is responsible for facilitating disclosures of wrongdoing in the federal government. It also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, the OSC participates in enforcement of the Uniformed Services Employment and Reemployment Rights Act.

The OSC carries out its mission by:

- investigating allegations of prohibited personnel practices and other improper employment practices within its jurisdiction, and seeking any appropriate corrective or disciplinary action;
- providing an independent, secure channel for disclosure and resolution of wrongdoing in federal agencies;
- interpreting and enforcing Hatch Act provisions on permissible and impermissible political activity; and
- promoting greater understanding of the rights and responsibilities of government employees.
- enforcing the law that protects service members reemployment rights

INVESTIGATING AND PROSECUTING PROHIBITED PERSONNEL PRACTICES

What are “prohibited personnel practices?”

Prohibited personnel practices, including reprisal for whistleblowing, are defined by law at § 2302(b) of title 5 of the United States Code (U.S.C.). A personnel action (such as an appointment, promotion, reassignment, or suspension) may need to be involved for a prohibited personnel practice to occur. Generally stated, § 2302(b) provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

- (1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
- (2) solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
- (3) coerce the political activity of any person;
- (4) deceive or willfully obstruct anyone from competing for employment;
- (5) influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
- (6) give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
- (7) engage in nepotism (i.e., hire, promote, or advocate the hiring or promotion of relatives);

- (8) engage in reprisal for whistleblowing—i.e., take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for disclosing to the Special Counsel, or to an Inspector General or comparable agency official (or others, except when disclosure is barred by law, or by Executive Order to avoid harm to the national defense or foreign affairs) information which the employee or applicant reasonably believes evidences a violation of any law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety;
- (9) take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
- (10) discriminate on the basis of off-duty conduct which does not adversely affect job performance;
- (11) take or fail to take, recommend, or approve a personnel action, if taking or failing to take the action would violate a veterans' preference requirement; or
- (12) take or fail to take a personnel action, if taking or failing to take the action would violate any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. §2301.

Who can be protected by the OSC from prohibited personnel practices?

The OSC has jurisdiction over prohibited personnel practices committed against most employees or applicants for employment in Executive Branch agencies and the Government Printing Office, but not against employees of—

- the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, and certain other intelligence agencies excluded by the President;
- the General Accounting Office;
- the U.S. Postal Service and Postal Rate Commission;

- the Federal Bureau of Investigation; and
- government corporations. (*Note, however, that employees and applicants in government corporations listed at 31 U.S.C. § 9101 are covered by statutory whistleblower protections.*)

How does the OSC handle a prohibited personnel practice complaint?

Complaints Examining Unit (CEU). The CEU receives complaints filed with the OSC. (Procedures for filing prohibited personnel practice and other complaints are described at p. 15). The unit analyzes all allegations of prohibited personnel practices (as well as allegations of other activities prohibited by civil service law, rule or regulation).

When necessary, a CEU examiner contacts the complainant to ensure that the examiner clearly understands the nature of and basis for each allegation. The examiner conducts further inquiry to the extent necessary to determine whether each allegation warrants additional investigation.

Persons who have submitted allegations to the CEU will receive:

- a letter acknowledging receipt of their complaint and identifying the staff member assigned to handle it, with information enclosed about how the complaint will be processed by the CEU; and
- a status report after 90 days, and every 60 days thereafter while the matter is active; and
- a letter advising that the matter has been referred to the OSC Investigation Division for further inquiry, with information enclosed about Investigation Division processes; or
- a preliminary letter, with a final opportunity for input when the CEU proposes to close a matter without remedial action or referral to the Investigation and Prosecution Division; or
- a letter advising that the OSC will take no further action because it lacks jurisdiction over the matter.

The OSC asks everyone who seeks an investigation of a possible prohibited personnel practice to select one of three consent statements explaining necessary communications between OSC and the agency involved. (Consent statements are shown at the OSC's Internet home page at www.osc.gov.)

Alternative Dispute Resolution (ADR) Unit. After CEU has completed its examination, OSC offers mediation, as an alternative to investigation, in selected prohibited personnel cases. Participation in the OSC mediation program is completely voluntary for both the complainant and the agency. If both parties agree to mediate their dispute, the OSC assigns a neutral third party - a mediator - to facilitate a discussion between the parties to reach a mutually agreeable resolution to the complaint. For more information on mediation at the OSC, click on the Mediation Program link on the OSC Web site at www.osc.gov (under Forms and Publications), or request a Mediation Program brochure from the OSC ADR Unit.

Investigation and Prosecution Division (IPD). After a thorough initial examination, the CEU refers matters indicating a potentially valid claim (under the laws enforced by the OSC) to OSC's Investigation and Prosecution Division Unit. This unit conducts investigations to review pertinent records and to interview complainants and witnesses with knowledge of the matters alleged. Matters not resolved during the investigative phase will undergo legal review and analysis to determine whether the IPD inquiry has established a violation of law, rule or regulation and whether the matter warrants corrective action, disciplinary action or both. Complainants will continue to receive 60-day status notices while matters are pending in the division.

Can the OSC delay a personnel action pending investigation of the matter?

An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action pending an OSC investigation. OSC will consider requesting a stay of a personnel action against an employee from an agency or from the U.S. Merit Systems Protection Board (MSPB) where: OSC has reasonable grounds to believe that a personnel action which was taken or will be taken constitutes a prohibited personnel practice and without a stay the employee will be subjected to removal; a suspension for more than 14 days; a reduction In grade; a significant reduction In pay; a geographic reassignment; the non-renewal of an appointment or an other personnel action which the complainant demonstrates will result in a serious, immediate hardship or where there exists a substantial likelihood a personnel action was taken or is to be taken, as a result of a prohibited personnel practice or where Special Counsel, in his sole discretion, otherwise determines that it would be appropriate and consistent with OSC's statutory mission to request a stay from the MSPB. If the

agency does not agree to a delay, the OSC may then ask the MSPB to stay the action. (The OSC cannot stay a personnel action on its own authority.)

How can the OSC remedy a prohibited personnel practice?

General. Current and former federal employees and applicants for federal employment may report suspected prohibited personnel practices to the OSC (see p. 15 for details). The matter will be investigated, and if there is sufficient evidence to prove a violation, the OSC can seek corrective action, disciplinary action, or both. Alternatively, parties in selected cases may agree to mediate their dispute in order to reach a mutually agreeable resolution of the prohibited personnel practice complaint.

Corrective action. The OSC may enter into discussions with an agency at any stage of a pending matter in pursuit of a resolution acceptable to all parties. The OSC follows a policy of early and firm negotiation to obtain appropriate corrective action (and/or disciplinary action) for apparent violations. If an agency fails to remedy a prohibited personnel practice upon request by the OSC, corrective action may also be obtained through litigation before the MSPB. Such litigation begins with the filing of a petition by the OSC, alleging that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is about to occur.

Corrective actions that can be ordered by the MSPB include job restoration, reversal of suspensions and other adverse actions, reimbursement of attorney's fees, back pay, and medical and other costs and damages.

How are allegations of whistleblower retaliation remedied?

The Whistleblower Protection Act also allows current or former federal employees and applicants for employment who allege that they were subjected to any personnel action because of whistleblowing to seek corrective action in an appeal to the MSPB. Such an appeal is known as an "individual right of action" (IRA).

By law, the employee or applicant must seek corrective action from the OSC before filing an IRA. The IRA may be filed—

- after the OSC closes a matter in which reprisal for whistleblowing has been alleged; or

- if the OSC has not notified the complainant within 120 days of receiving an allegation of whistleblower reprisal that it will seek corrective action.

A federal employee or applicant for employment engages in whistleblowing when the individual discloses to the Special Counsel or an Inspector General or comparable agency official (or to others, except when disclosure is barred by law, or by Executive Order to avoid harm to the national defense or foreign affairs) information which the individual reasonably believes evidences the following types of wrongdoing:

- a violation of law, rule, or regulation; or
- gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Procedures for filing an IRA are set forth in MSPB regulations at 5 C.F.R. Part 1209. (In considering an IRA, it should be noted that the MSPB may refuse to take jurisdiction over any matters not specifically raised before the OSC.)

Disciplinary action. The OSC may seek disciplinary action against any employee believed to be responsible for committing a prohibited personnel practice. The OSC begins a disciplinary action case by filing a complaint with the MSPB, charging an employee with the commission of a prohibited personnel practice, and seeking disciplinary action against that person. Rights of employees against whom the OSC seeks disciplinary action in these cases are set forth in MSPB regulations, at 5 C.F.R. Part 1201, Subpart D.

In the alternative, at any time during its investigation of a matter, the OSC may authorize the agency involved to take disciplinary action against an employee believed to be responsible for committing a prohibited personnel practice. (Pursuant to 5 U.S.C. § 1214(f), during any OSC investigation under title 5, an agency may not take disciplinary action against any employee for any alleged prohibited activity under investigation, or for any related activity, without approval from the OSC.)

Intervention. Pursuant to 5 U.S.C. § 1212(c), the Special Counsel may intervene as a matter of right, or otherwise participate in most proceedings before the MSPB. The Special Counsel may not intervene in certain proceedings (IRAs brought under 5 U.S.C. § 1221, or matters otherwise appealable to the MSPB under 5 U.S.C. § 7701) without the consent of the person initiating the proceedings.

Can employees seek relief from the OSC for a prohibited personnel practice if they are covered by a collective bargaining agreement?

Pursuant to 5 U.S.C. § 7121(g), employees covered by a collective bargaining agreement must choose one of three avenues: an OSC complaint, an MSPB appeal, or a grievance under the collective bargaining agreement.

What is the OSC's policy about allegations of discrimination under § 2302(b)(1)?

Race, color, religion, sex, national origin, age, handicapping condition. The OSC is statutorily authorized to investigate allegations of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition (see (1) under "What are prohibited personnel practices?", above). However, procedures for investigating such complaints have already been established in federal agencies and the Equal Employment Opportunity Commission (EEOC).

Therefore, to avoid duplicating those investigative processes, the OSC follows a general policy of deferring complaints involving discrimination to those agencies' procedures.

Marital status, political affiliation. Allegations of discrimination based on marital status, and political affiliation are not within the jurisdiction of the EEOC. Such allegations, however, may be prohibited personnel practices or other violations of law subject to investigation by the OSC.

Discrimination under § 2302(b)(10), for off-duty conduct, can also be investigated by OSC.

For example, Jack's employment is terminated because he attended a "Gay Pride" march; or he attended a "Pro-Life" event; or he attended an animal rights rally; or he attended a gun-owners' rights meeting.

What do I do if I believe my veterans' preference rights were violated?

You should file a complaint with U.S. Department of Labor, Veterans Employment and Training Service.

The Veterans Employment Opportunities Act of 1998 (VEOA), 5 U.S.C. § 3330 et seq., created a new avenue of administrative redress specifically for a preference eligible who alleges that a federal agency violated such individual's rights under any statute or regulation relating to a veterans' preference eligible.

Under the VEOA, in order to seek corrective action, a preference eligible is to file a written complaint with the U.S. Department of Labor, Veterans Employment and Training Service (VETS), **within 60 days** of the alleged violation. VEOA requires the Secretary of Labor, through VETS to investigate the complaint and, upon determining that a violation occurred, to attempt to resolve the complaint by making reasonable efforts to ensure that the agency complies with the statute or regulation relating to veterans' preference. If the Secretary is unable to resolve a complaint within 60 days, the Secretary is to provide notification of an unsuccessful effort to resolve the complaint to the complainant.

In light of the VEOA, OSC does not investigate allegations of violations of veterans' preference rights for corrective action purposes. (We still investigate such allegations for possible disciplinary action, however.) Thus, you should file a complaint alleging a violation of a veterans' preference rights with VETS, not OSC.

Additional information about VETS can be found at <http://www.dol.gov/dol/vets>.

What other violations does the OSC have jurisdiction to investigate?

Pursuant to 5 U.S.C. § 1216, the OSC may also investigate and seek appropriate corrective and disciplinary action for—

- activities prohibited by any civil service law, rule, or regulation (including any activity relating to political intrusion in personnel decision making);
- arbitrary or capricious withholding of information under the Freedom of Information Act; and
- involvement by any employee in any prohibited discrimination found by a court or administrative authority to have occurred in the course of any personnel action. The OSC is also authorized by 38 U.S.C. § 4324 to investigate and litigate cases referred by the Department of Labor, involving the reemployment rights of veterans and reservists returning to the federal workplace after active duty.

Are federal employees required to cooperate with OSC investigations?

Federal employees are required by Civil Service Rule 5.4 to provide to the OSC any information, testimony, documents, and material, the disclosure of which is not otherwise prohibited by law or regulation, in investigations of matters under civil service law, rule, or regulation. The same rule requires federal agencies to make employees available to testify, and to provide pertinent records to the OSC.

Title 5 of the U.S. Code authorizes the OSC to issue subpoenas for documents and the attendance and testimony of witnesses. During an investigation, the OSC may require employees and others to testify under oath, sign written statements, or respond formally to written questions.

What legal responsibilities do federal agencies have to prevent prohibited personnel practices?

Section 2302(c) of title 5 requires federal agency heads, and officials with delegated authority for any aspect of personnel management, to:

- prevent prohibited personnel practices, including reprisal for whistleblowing;
- comply with and enforce civil service laws, rules and regulations; and
- ensure (in consultation with the OSC) that federal employees are informed of their rights and remedies. The OSC has developed easy-to-use information and training guide for use by agencies in carrying out the duty of informing employees of their rights and remedies under title 5 (see p. 19 for information on availability). On request, the OSC may also make its personnel available to assist in conducting such training.

RECEIVING WHISTLEBLOWER DISCLOSURES

Who can use the OSC's whistleblower disclosure channel?

Current and former federal employees and applicants for employment can confidentially report wrongdoing in federal agencies to the OSC. The OSC serves as a secure channel that can be used to disclose a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. Whistleblower disclosures to the OSC must be made in writing (see p. 20 for contact information). Such information can be reported to the OSC without fear of reprisal, or disclosure of the source's identity without that person's consent.

How are whistleblower disclosures handled by the OSC?

The OSC is not authorized to investigate allegations reported through its whistleblower disclosure channel. However, the OSC can require the head of the agency concerned to investigate the matter if the OSC determines that there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. In these cases, the head of the agency is required to submit a report of the agency's findings to the OSC. By law, employees or applicants may review and comment on agency reports resulting from information disclosed by them to the OSC. Their comments, together with any comments or recommendations by the Special Counsel, are sent with the agency report to the President and appropriate congressional oversight committees. The agency report is also made available to the public, as required by law.

ADVISING ON AND ENFORCING THE HATCH ACT

What is the Hatch Act?

The Hatch Act governs political activity by government employees at the federal, state and local levels. Under amendments enacted by Congress in 1993, most federal and District of Columbia (D.C.) government employees are permitted (with significant limitations discussed at pp. 11-14) to take an active part in partisan political management and campaigns. However, certain federal agencies and categories of employees continue to be prohibited from taking an active part in partisan political management and partisan campaigns (see p. 14).

The Hatch Act also restricts political activity by certain state or local government employees employed in connection with programs financed by federal funds. These employees are not permitted to coerce the political activities of others, or to be candidates for public office in partisan elections.

What is the OSC's role?

The OSC is authorized by law to provide Hatch Act advisory opinions. These opinions respond to questions from government employees and others about whether or not they may engage in specific political activities under the act.

The OSC also enforces Hatch Act provisions on permissible and impermissible political activity by government employees. It is the only agency authorized to prosecute violations of the act, which are adjudicated by the MSPB.

What restrictions apply to employees of the federal government and the District of Columbia?

Under the Hatch Act, as amended (5 U.S.C. §7321, et seq.), most federal and D.C. government employees (with certain exceptions noted at p.13) may take an active part in partisan political management and campaigns. They may:

- be candidates for public office in nonpartisan elections;
- register and vote as they choose;
- assist in voter registration drives;
- express opinions about candidates and issues;
- contribute money to political organizations;
- attend political fundraising functions;
- attend and be active at political rallies and meetings;
- join and be active members of political parties and clubs;
- sign nominating petitions;

- campaign for or against referendum questions, constitutional amendments, or municipal ordinances;
- campaign for or against candidates in partisan elections;
- make campaign speeches for candidates in partisan elections;
- distribute campaign literature in partisan elections; and
- hold office in political parties or clubs.

There continues to be important restrictions on employees' political activity. Whether on-duty or off-duty, employees may **not**:

- use their official authority or influence to interfere with or affect the result of an election;
- solicit, accept or receive political contributions from anyone (with a very narrow exception in certain circumstances for solicitations of other federal employees for contributions to federal labor organizations and certain other employee organizations);
- knowingly solicit or discourage political activity of anyone who has business before their agency;
- run for public office in a partisan political election.

Except for certain officials at the highest levels of government, employees may **not** engage in political activity while:

- on duty;
- in a government office;
- wearing insignia identifying their office or position; or
- using a government vehicle.

Employees of the following agencies are prohibited from engaging in partisan political activity: Federal Election Commission; Federal Bureau of Investigation; Secret Service; Central Intelligence Agency; National Security Council; National Security Agency; Defense Intelligence Agency; Merit Systems Protection Board; Office of Special Counsel; Office of Criminal Investigation of the Internal Revenue Service; Office of Investigative Programs of the United States Customs Service; Office of Law Enforcement of the Bureau of Alcohol, Tobacco and Firearms;

Criminal Division of the Department of Justice; and the National Imagery and Mapping Agency.

The following categories of employees are also prohibited from engaging in partisan political activity: career members of the Senior Executive Service, Administrative Law Judges, and members of Contract Appeals Boards.

If the MSPB finds that a federal or D.C. government employee has violated the Hatch Act, what penalties may the Special Counsel request?

The Special Counsel may ask the MSPB to impose any penalty ranging from a 30-day suspension without pay to removal from federal service.

What restrictions apply to state and local government employees?

Pursuant to 5 U.S.C. § 1501, et seq., persons principally employed by state or local executive agencies in connection with programs wholly or partly financed by federal funds may **not:**

- use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- directly or indirectly coerce, attempt to coerce, command, or advise a state or local employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
- be candidates for public office in partisan elections.

If the MSPB finds that a state or local government employee has violated the Hatch Act, what penalties may the Special Counsel request?

The Special Counsel may ask the MSPB to order the withholding of federal funds from a state or local agency if:

- the agency has failed to remove an employee found by the MSPB to have engaged in prohibited political activity, or

- after removal, such employee is re-employed within 18 months by a state or local agency in the same state.

Who may file a Hatch Act complaint with the OSC?

Anyone who believes that a violation of the Hatch Act has occurred may file a complaint (see below for details). The OSC will investigate and, if warranted, prosecute the offender for violating the law.

What is the Uniform Services Employment and Reemployment Rights Act?

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is the federal law that protects the employment and reemployment rights of National Guard, Armed Forces Reserve, and other uniformed service members who leave their civilian jobs to perform uniformed service. USERRA also proscribes discrimination on the basis of past, current, or future uniformed service. OSC's USERRA Unit prosecutes meritorious USERRA claims brought against federal agencies. Pursuant to a demonstration project that operates until September 30, 2007, the USERRA Unit also investigates certain federal sector USERRA cases.

HOW TO FILE A PROHIBITED PERSONNEL PRACTICE, HATCH ACT, OR OTHER COMPLAINT

Individuals may report suspected unlawful activity (including prohibited personnel practices and Hatch Act violations) to the OSC without being represented by an attorney. Complaints of such activities should be submitted to the OSC in writing. Although the use of an OSC complaint form is not required, one will be provided upon request. The form can also be found at the OSC home page on the Internet (see p. 18 for site address).

The following information should be included in the written submission:

- the full name and address of the person requesting OSC action, and a phone number at which the person may be contacted;
- the name and address or location of the government agency involved, including the specific office or activity that is the subject of the request for assistance;
- the job title, pay grade and employment status of the employee(s) affected by the allegedly prohibited action(s);
- an indication whether the information submitted to the OSC involves—
 - a prohibited personnel practice or other violation of civil service law, rule or regulation;
 - prohibited political activity under the Hatch Act; or
 - a violation of any other law, rule or regulation under the OSC's jurisdiction.
- a brief and accurate statement of the facts supporting the report of a prohibited activity, including—
 - a concise description of the events that took place, with dates;
 - the name(s) of the person(s) involved, and anyone with relevant information; and
 - any pertinent documentary evidence or information currently in possession of the person requesting OSC action;
- for reports of a *prohibited personnel practice*—
 - a description, with date(s), of the specific personnel action(s) taken or proposed, if any;
 - a description, with date(s), of any whistleblower disclosure by the complainant—i.e., a disclosure of a violation of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety involved (limited to allegations of reprisal for whistleblower disclosures);
 - whether the complainant is covered by a collective bargaining agreement; and

- whether the matter reported has been appealed, grieved or reported under any other procedure, and if so, what action or actions have been taken.

To expedite investigations, persons filing complaints with the OSC are encouraged to respond promptly to requests for additional information. The OSC depends upon complete and accurate information to determine if a matter falls within its authority or if further action is appropriate.

All complaints and requests for appropriate forms should be directed to the OSC Officer of the Week at:

Complaints Examining Unit

U.S. Office of Special Counsel
1730 M Street, NW (Suite 218)
Washington, DC 20036-4505
Tel: (800) 872-9855 (TDD-equipped)
(202) 254-3670 (TDD-equipped)
Fax: (202) 653-0015

HOW TO MAKE A WHISTLEBLOWER DISCLOSURE

Disclosures of information evidencing violations of any law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety may be reported in confidence to:

Disclosure Unit

U.S. Office of Special Counsel
1730 M Street, NW (Suite 218)
Washington, DC 20036-4505
Tel: (800) 572-2249
(202) 254-3640
Fax: (202) 653-5151

HOW TO OBTAIN A HATCH ACT ADVISORY OPINION

Individuals may request advice about permissible and impermissible political activity under the Hatch Act, and receive an oral or written opinion, as appropriate, from the OSC. Requests may be submitted to:

Hatch Act Unit

U.S. Office of Special Counsel
1730 M Street, NW (Suite 218)
Washington, DC 20036-4505
Tel: (800) 85-HATCH [(800) 854-2824]
(202) 254-3650
Fax: (202) 653-5151
E-mail: hatchact@osc.gov

HOW TO REPORT A USERRA VIOLATION

USERRA Unit

U.S. Office of Special Counsel
1730 M Street, NW (Suite 218)
Washington, DC 20036-4505
Tel: (202) 254-3620
Fax: (202) 653-5151
E-mail: userra@osc.gov

HOW TO OBTAIN OSC PUBLICATIONS

On the Internet (at www.osc.gov):

Forms

- Complaint Form
- Whistleblower Disclosure Form
- How Your Complaint Will Be Processed By the Office of Special Counsel
- What To Expect Now That Your Complaint Has Been Referred For Further Investigation
- What To Expect Now That Your Case Has Been Referred To OSC's Prosecution Division
- Policy Statement Concerning the Disclosure of Information Regarding Personnel Practice Complaints
- Policy Statement on Disclosure and Use of Information From OSC Files

Brochures

- The Role of the U.S. Office of Special Counsel

- Employee Rights and Remedies Under 5 U.S.C., Chapters 12 and 23 (Training Guide)
- Political Activity and the Federal Employee
- Political Activity and the State and Local Employee

Through the U.S. Government Printing Office (GPO):

- The Role of the U.S. Office of Special Counsel (GPO # 028-004-00105-9)
- Employee Rights and Remedies Under 5 U.S.C., Chapters 12 and 23 (GPO # 062-000-00050-3)
- Political Activity and the Federal Employee (GPO #062-000-00048-1)
- Political Activity and the State and Local Employee (GPO #062-000-00049-0)

OSC ONLINE

Further information about the OSC is available on the agency's Internet home page. In addition to OSC forms and publications, the site includes a link to the OSC e-mail address for Hatch Act advisory opinions. The full address for the home page is: <http://www.osc.gov>.

HOW TO REQUEST OSC SPEAKERS

Requests for OSC speakers at training sessions, conferences and similar events should be sent to:

Outreach Specialist
 U.S. Office of Special Counsel
 1730 M Street, NW (Suite 218)
 Washington, DC 20036-4505
 Tel: (202) 254-3600
 Fax: (202) 653-5161

OSC PHONE NUMBERS TO NOTE

Complaints Examining Unit (CEU):	(202) 254-3670 (TDD-equipped)
CEU (Toll-Free):	(800) 872-9855 (TDD-equipped)
Hatch Act (HA) Unit:	(202) 254-3650
HA (Toll-Free):	(800) 85-HATCH (800) 854-2824

Disclosure Hotline (DH): (202) 254-3640
DH (Toll-Free): (800) 572-2249

USERRA Unit: (202) 254-3620

OSC FIELD OFFICES

Dallas Field Office
525 Griffin Street, Room 824, Box # 103
Dallas, TX 75202
(214) 747-1519

San Francisco Bay Area Field Office
1301 Clay Street (Suite 1220N)
Oakland, CA 94612-5217
(510) 637-3460

Detroit Field Office
477 Michigan Avenue (Suite 2340)
Detroit, MI 48226
(313) 226-4496

QUESTIONS ABOUT OSC?

Call Customer Service Unit (CSU): (202) 254-3600

This pamphlet is provided to the public as a general guide. It is not intended to create any rights, benefits or privileges, and should not be considered a regulatory or other legal authority.

(01/06)

From: [Mass Mailer](#)
To: [All EPA Employees](#)
Subject: Whistleblower Protection
Date: Wednesday, June 05, 2013 11:24:20 AM
Importance: High



MEMORANDUM

Subject: Whistleblower Protection
From: Arthur A. Elkins Jr.
To: All EPA Employees

When the Whistleblower Protection Enhancement Act of 2012 was signed into law on November 27, 2012, the law bolstered the protections and rights found in the Whistleblower Protection Act of 1989. The EPA Office of Inspector General has a great appreciation for what whistleblowers bring to our efforts to eliminate fraud, waste and abuse. The following whistleblower rights, protections and remedial processes are just a few of the provisions now available through the enhanced act:

- Provides for the awarding of enhanced monetary damages to whistleblowing employees who are found to have been retaliated against for "blowing the whistle."
- Protects whistleblowing employees who challenge policy decisions. The whistleblower must reasonably believe that the policy decision involves a violation of law, rule or regulation; exemplifies gross waste or mismanagement; or demonstrates an abuse of authority or danger to public health or safety.
- Provides whistleblower protection for government scientists who challenge censorship of scientific information or make whistleblower disclosures related to the integrity of scientific processes.
- Removes impediments that had been imposed on whistleblower disclosures. Any disclosure of gross waste or mismanagement, fraud, abuse, or illegal activity may be treated as a disclosure for which the whistleblowing employee should receive protection.
- Provides whistleblower protection for employees of federal contractors and grantees. (See the National Defense Authorization Act for Fiscal Year 2013.)

Another provision of the Whistleblower Protection Enhancement Act of 2012 requires that agency inspectors general designate a whistleblower protection ombudsman to be responsible for educating employees about whistleblower protections, rights and remedies. While called "ombudsman" by the act, this is not a traditional ombudsman role. Rather, this ombudsman, as specifically defined by the act, is limited to educational functions and may not serve as a representative or advocate for a whistleblowing employee. I have designated Howard Nicholson, an attorney with the EPA OIG, to serve as the agency's whistleblower protection ombudsman.

Howard will be sending out additional information that explains the rights available to employees who believe they qualify as whistleblowers, the processes available for them to act on their concerns, and the remedial processes available when an employee believes there has been a reprisal as a result of a protected disclosure. Besides responding to individual inquiries, Howard is also available to address staff gatherings and to provide training on this important issue. Please feel free to contact Howard at (202) 566-0867 or nicholson.howard@epa.gov. For more information about the EPA's Whistleblower Protection Program, please call (202) 566-1513 or email whistleblower_protection@epa.gov.

General, or to an authorized designee, such information or assistance.” OMB’s language appears to undercut Inspector General authority and independence.

Proposed EPA Order 3145, *Position Management Program*. The EPA’s Office of Human Resources proposed the establishment of Order 3145 to strategically align and leverage the EPA’s Position Management Program with the workforce planning and budget process, and with diversity initiatives. This order also was intended to address the OIG’s recommendations in a February 2011 evaluation report examining agencywide controls over staff resources. We provided a number of comments to help strengthen and clarify the order, including:

- a) Identifying more appropriate authorities and references to be included or replaced in the order.
- b) Specifically identifying proper roles and responsibilities of those involved.
- c) Adding a subsection to specifically identify who is responsible for position management in the OIG since the OIG is independent of the agency’s position management program.

Additionally, we provided a list of position management criteria to assist agency management in determining whether position management was considered in organizational and individual position design and in workforce planning, and to facilitate using position management and organizational design theories, tools and techniques.

EPA OIG Designates Whistleblower Protection Ombudsman to Educate Agency Employees on Whistleblower Issues

In late 2012, Congress passed the Whistleblower Protection Enhancement Act of 2012, bolstering the Whistleblower Protection Act of 1989. The EPA OIG has a great appreciation for what whistleblowers bring to efforts to root out fraud, waste and abuse. We applaud this act for its intent to ensure that whistleblowing employees be protected from retaliation (e.g., removal, demotion, transfer). In response to the act, the EPA Inspector General has designated an experienced practitioner of Inspector General law from the OIG’s Office of Counsel to serve as the EPA Whistleblower Protection Ombudsman.

The act requires a broad outreach effort, and agency Inspectors General are required to ensure that agency employees are adequately informed about relevant whistleblower issues. The act indicates that the Whistleblower Protection Ombudsman is to be responsible for educating employees about whistleblower protections, rights and remedies. Therefore, while called “ombudsman” by the act, the Whistleblower Protection Ombudsman is not a traditional ombudsman role. Rather, this ombudsman, as specifically defined by the act, is limited to educational functions, and may not serve as a representative or advocate for a whistleblower employee.

The EPA Whistleblower Protection Ombudsman has ready access to, and the full support of, the EPA Inspector General. The Inspector General has reached out to the EPA workforce to introduce the existence of the Whistleblower Protection Ombudsman. As a result of that introduction, several agency employees have sought guidance from the EPA Whistleblower Protection Ombudsman on possible whistleblower issues. The EPA OIG will be making a focused effort to reach the EPA workforce through a variety of means to ensure that the educational mandate of the act is carried out.

EPA OIG Surveys Staff and Stakeholders as Part of Outreach Efforts

The EPA OIG, as part of its constant efforts to directly involve its staff in the planning and development of the OIG, conducted its biennial SWOT (strengths, weaknesses, opportunities and threats) survey and analysis. More than 60 percent of OIG staff members participated in the survey anonymously, providing more than 3,000 comments to help leadership identify key issues, risks, perceived problems, successes and ideas for changes and improvements. Additionally, as part of our external outreach, we asked outside OIG stakeholders to give us direct feedback on their perceptions of the strengths and potential areas for improvements for OIG products and services. This process of self-reflection and assessment demonstrates the OIG's commitment to customer service, integrity and accountability.